

AMENDED IN ASSEMBLY JUNE 21, 2016

AMENDED IN SENATE MARCH 17, 2016

SENATE BILL

No. 1011

Introduced by Senator Mendoza

February 11, 2016

An act to amend, repeal, and add Section 1091 of the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1011, as amended, Mendoza. Public officers: contracts: financial interest.

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in a contract, as specified, made by them in their official capacity or by any body or board of which they are members, subject to specified exceptions. *Existing law imposes a criminal penalty on every officer or person who willfully violates these prohibitions.* Existing law identifies certain remote interests that are not subject to this prohibition and other situations in which an official is not deemed to be financially interested in a contract, including, among others, that of a parent in the earnings of his or her minor child for personal services.

This bill would, on and after January 1, 2018, include within the definition of remote interest that of a public officer in the financial interest of that public officer's child, parent, sibling, or the spouse of the child, parent, or sibling, except a public officer's financial interests do not include any financial interest of those other persons unless the interest is actually known to the public officer. *By expanding these prohibitions, this bill would create a new crime, and thus would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1091 of the Government Code is amended
2 to read:

3 1091. (a) An officer shall not be deemed to be interested in a
4 contract entered into by a body or board of which the officer is a
5 member within the meaning of this article if the officer has only
6 a remote interest in the contract and if the fact of that interest is
7 disclosed to the body or board of which the officer is a member
8 and noted in its official records, and thereafter the body or board
9 authorizes, approves, or ratifies the contract in good faith by a vote
10 of its membership sufficient for the purpose without counting the
11 vote or votes of the officer or member with the remote interest.

12 (b) As used in this article, "remote interest" means any of the
13 following:

14 (1) That of an officer or employee of a nonprofit entity exempt
15 from taxation pursuant to Section 501(c)(3) of the Internal Revenue
16 Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of
17 the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a
18 nonprofit corporation, except as provided in paragraph (8) of
19 subdivision (a) of Section 1091.5.

20 (2) That of an employee or agent of the contracting party, if the
21 contracting party has 10 or more other employees and if the officer
22 was an employee or agent of that contracting party for at least three
23 years prior to the officer initially accepting his or her office and
24 the officer owns less than 3 percent of the shares of stock of the
25 contracting party; and the employee or agent is not an officer or
26 director of the contracting party and did not directly participate in
27 formulating the bid of the contracting party.

28 For purposes of this paragraph, time of employment with the
29 contracting party by the officer shall be counted in computing the

1 three-year period specified in this paragraph even though the
2 contracting party has been converted from one form of business
3 organization to a different form of business organization within
4 three years of the initial taking of office by the officer. Time of
5 employment in that case shall be counted only if, after the transfer
6 or change in organization, the real or ultimate ownership of the
7 contracting party is the same or substantially similar to that which
8 existed before the transfer or change in organization. For purposes
9 of this paragraph, stockholders, bondholders, partners, or other
10 persons holding an interest in the contracting party are regarded
11 as having the “real or ultimate ownership” of the contracting party.

12 (3) That of an employee or agent of the contracting party, if all
13 of the following conditions are met:

14 (A) The agency of which the person is an officer is a local public
15 agency located in a county with a population of less than 4,000,000.

16 (B) The contract is competitively bid and is not for personal
17 services.

18 (C) The employee or agent is not in a primary management
19 capacity with the contracting party, is not an officer or director of
20 the contracting party, and holds no ownership interest in the
21 contracting party.

22 (D) The contracting party has 10 or more other employees.

23 (E) The employee or agent did not directly participate in
24 formulating the bid of the contracting party.

25 (F) The contracting party is the lowest responsible bidder.

26 (4) That of a parent in the earnings of his or her minor child for
27 personal services.

28 (5) That of a landlord or tenant of the contracting party.

29 (6) That of an attorney of the contracting party or that of an
30 owner, officer, employee, or agent of a firm that renders, or has
31 rendered, service to the contracting party in the capacity of
32 stockbroker, insurance agent, insurance broker, real estate agent,
33 or real estate broker, if these individuals have not received and
34 will not receive remuneration, consideration, or a commission as
35 a result of the contract and if these individuals have an ownership
36 interest of 10 percent or more in the law practice or firm, stock
37 brokerage firm, insurance firm, or real estate firm.

38 (7) That of a member of a nonprofit corporation formed under
39 the Food and Agricultural Code or a nonprofit corporation formed
40 under the Corporations Code for the sole purpose of engaging in

1 the merchandising of agricultural products or the supplying of
2 water.

3 (8) That of a supplier of goods or services when those goods or
4 services have been supplied to the contracting party by the officer
5 for at least five years prior to his or her election or appointment
6 to office.

7 (9) That of a person subject to the provisions of Section 1090
8 in any contract or agreement entered into pursuant to the provisions
9 of the California Land Conservation Act of 1965.

10 (10) Except as provided in subdivision (b) of Section 1091.5,
11 that of a director of, or a person having an ownership interest of,
12 10 percent or more in a bank, bank holding company, or savings
13 and loan association with which a party to the contract has a
14 relationship of borrower or depositor, debtor or creditor.

15 (11) That of an engineer, geologist, architect, or planner
16 employed by a consulting engineering, architectural, or planning
17 firm. This paragraph applies only to an employee of a consulting
18 firm who does not serve in a primary management capacity, and
19 does not apply to an officer or director of a consulting firm.

20 (12) That of an elected officer otherwise subject to Section 1090,
21 in any housing assistance payment contract entered into pursuant
22 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.
23 Sec. 1437f) as amended, provided that the housing assistance
24 payment contract was in existence before Section 1090 became
25 applicable to the officer and will be renewed or extended only as
26 to the existing tenant, or, in a jurisdiction in which the rental
27 vacancy rate is less than 5 percent, as to new tenants in a unit
28 previously under a Section 8 contract. This section applies to any
29 person who became a public official on or after November 1, 1986.

30 (13) That of a person receiving salary, per diem, or
31 reimbursement for expenses from a government entity.

32 (14) That of a person owning less than 3 percent of the shares
33 of a contracting party that is a for-profit corporation, provided that
34 the ownership of the shares derived from the person's employment
35 with that corporation.

36 (15) That of a party to litigation involving the body or board of
37 which the officer is a member in connection with an agreement in
38 which all of the following apply:

1 (A) The agreement is entered into as part of a settlement of
2 litigation in which the body or board is represented by legal
3 counsel.

4 (B) After a review of the merits of the agreement and other
5 relevant facts and circumstances, a court of competent jurisdiction
6 finds that the agreement serves the public interest.

7 (C) The interested member has recused himself or herself from
8 all participation, direct or indirect, in the making of the agreement
9 on behalf of the body or board.

10 (16) That of a person who is an officer or employee of an
11 investor-owned utility that is regulated by the Public Utilities
12 Commission with respect to a contract between the investor-owned
13 utility and a state, county, district, judicial district, or city body or
14 board of which the person is a member, if the contract requires the
15 investor-owned utility to provide energy efficiency rebates or other
16 type of program to encourage energy efficiency that benefits the
17 public when all of the following apply:

18 (A) The contract is funded by utility consumers pursuant to
19 regulations of the Public Utilities Commission.

20 (B) The contract provides no individual benefit to the person
21 that is not also provided to the public, and the investor-owned
22 utility receives no direct financial profit from the contract.

23 (C) The person has recused himself or herself from all
24 participation in making the contract on behalf of the state, county,
25 district, judicial district, or city body or board of which he or she
26 is a member.

27 (D) The contract implements a program authorized by the Public
28 Utilities Commission.

29 (17) That of an owner or partner of a firm serving as an
30 appointed member of an unelected board or commission of the
31 contracting agency if the owner or partner recuses himself or
32 herself from providing any advice to the contracting agency
33 regarding the contract between the firm and the contracting agency
34 and from all participation in reviewing a project that results from
35 that contract.

36 (c) This section is not applicable to any officer interested in a
37 contract who influences or attempts to influence another member
38 of the body or board of which he or she is a member to enter into
39 the contract.

1 (d) The willful failure of an officer to disclose the fact of his or
2 her interest in a contract pursuant to this section is punishable as
3 provided in Section 1097. That violation does not void the contract
4 unless the contracting party had knowledge of the fact of the remote
5 interest of the officer at the time the contract was executed.

6 (e) This section shall be repealed on January 1, 2018.

7 SEC. 2. Section 1091 is added to the Government Code, to
8 read:

9 1091. (a) An officer shall not be deemed to be interested in a
10 contract entered into by a body or board of which the officer is a
11 member within the meaning of this article if the officer has only
12 a remote interest in the contract and if the fact of that interest is
13 disclosed to the body or board of which the officer is a member
14 and noted in its official records, and thereafter the body or board
15 authorizes, approves, or ratifies the contract in good faith by a vote
16 of its membership sufficient for the purpose without counting the
17 vote or votes of the officer or member with the remote interest.

18 (b) As used in this article, “remote interest” means any of the
19 following:

20 (1) That of an officer or employee of a nonprofit entity exempt
21 from taxation pursuant to Section 501(c)(3) of the Internal Revenue
22 Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of
23 the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a
24 nonprofit corporation, except as provided in paragraph (8) of
25 subdivision (a) of Section 1091.5.

26 (2) That of an employee or agent of the contracting party, if the
27 contracting party has 10 or more other employees and if the officer
28 was an employee or agent of that contracting party for at least three
29 years prior to the officer initially accepting his or her office and
30 the officer owns less than 3 percent of the shares of stock of the
31 contracting party; and the employee or agent is not an officer or
32 director of the contracting party and did not directly participate in
33 formulating the bid of the contracting party.

34 For purposes of this paragraph, time of employment with the
35 contracting party by the officer shall be counted in computing the
36 three-year period specified in this paragraph even though the
37 contracting party has been converted from one form of business
38 organization to a different form of business organization within
39 three years of the initial taking of office by the officer. Time of
40 employment in that case shall be counted only if, after the transfer

1 or change in organization, the real or ultimate ownership of the
2 contracting party is the same or substantially similar to that which
3 existed before the transfer or change in organization. For purposes
4 of this paragraph, stockholders, bondholders, partners, or other
5 persons holding an interest in the contracting party are regarded
6 as having the “real or ultimate ownership” of the contracting party.

7 (3) That of an employee or agent of the contracting party, if all
8 of the following conditions are met:

9 (A) The agency of which the person is an officer is a local public
10 agency located in a county with a population of less than 4,000,000.

11 (B) The contract is competitively bid and is not for personal
12 services.

13 (C) The employee or agent is not in a primary management
14 capacity with the contracting party, is not an officer or director of
15 the contracting party, and holds no ownership interest in the
16 contracting party.

17 (D) The contracting party has 10 or more other employees.

18 (E) The employee or agent did not directly participate in
19 formulating the bid of the contracting party.

20 (F) The contracting party is the lowest responsible bidder.

21 (4) That of a parent in the earnings of his or her minor child for
22 personal services.

23 (5) That of a public officer in the financial interest of that public
24 officer’s child, parent, sibling, or the spouse of the child, parent,
25 or sibling, except a public officer’s financial interests do not
26 include any financial interest of those other persons unless the
27 interest is actually known to the public officer.

28 (6) That of a landlord or tenant of the contracting party.

29 (7) That of an attorney of the contracting party or that of an
30 owner, officer, employee, or agent of a firm that renders, or has
31 rendered, service to the contracting party in the capacity of
32 stockbroker, insurance agent, insurance broker, real estate agent,
33 or real estate broker, if these individuals have not received and
34 will not receive remuneration, consideration, or a commission as
35 a result of the contract and if these individuals have an ownership
36 interest of 10 percent or more in the law practice or firm, stock
37 brokerage firm, insurance firm, or real estate firm.

38 (8) That of a member of a nonprofit corporation formed under
39 the Food and Agricultural Code or a nonprofit corporation formed
40 under the Corporations Code for the sole purpose of engaging in

1 the merchandising of agricultural products or the supplying of
2 water.

3 (9) That of a supplier of goods or services when those goods or
4 services have been supplied to the contracting party by the officer
5 for at least five years prior to his or her election or appointment
6 to office.

7 (10) That of a person subject to the provisions of Section 1090
8 in any contract or agreement entered into pursuant to the provisions
9 of the California Land Conservation Act of 1965.

10 (11) Except as provided in subdivision (b) of Section 1091.5,
11 that of a director of, or a person having an ownership interest of,
12 10 percent or more in a bank, bank holding company, or savings
13 and loan association with which a party to the contract has a
14 relationship of borrower or depositor, debtor or creditor.

15 (12) That of an engineer, geologist, architect, or planner
16 employed by a consulting engineering, architectural, or planning
17 firm. This paragraph applies only to an employee of a consulting
18 firm who does not serve in a primary management capacity, and
19 does not apply to an officer or director of a consulting firm.

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23 Sec. 1437f) as amended, provided that the housing assistance
24 payment contract was in existence before Section 1090 became
25 applicable to the officer and will be renewed or extended only as
26 to the existing tenant, or, in a jurisdiction in which the rental
27 vacancy rate is less than 5 percent, as to new tenants in a unit
28 previously under a Section 8 contract. This section applies to any
29 person who became a public official on or after November 1, 1986.

30 (14) That of a person receiving salary, per diem, or
31 reimbursement for expenses from a government entity.

32 (15) That of a person owning less than 3 percent of the shares
33 of a contracting party that is a for-profit corporation, provided that
34 the ownership of the shares derived from the person's employment
35 with that corporation.

36 (16) That of a party to litigation involving the body or board of
37 which the officer is a member in connection with an agreement in
38 which all of the following apply:

1 (A) The agreement is entered into as part of a settlement of
2 litigation in which the body or board is represented by legal
3 counsel.

4 (B) After a review of the merits of the agreement and other
5 relevant facts and circumstances, a court of competent jurisdiction
6 finds that the agreement serves the public interest.

7 (C) The interested member has recused himself or herself from
8 all participation, direct or indirect, in the making of the agreement
9 on behalf of the body or board.

10 (17) That of a person who is an officer or employee of an
11 investor-owned utility that is regulated by the Public Utilities
12 Commission with respect to a contract between the investor-owned
13 utility and a state, county, district, judicial district, or city body or
14 board of which the person is a member, if the contract requires the
15 investor-owned utility to provide energy efficiency rebates or other
16 type of program to encourage energy efficiency that benefits the
17 public when all of the following apply:

18 (A) The contract is funded by utility consumers pursuant to
19 regulations of the Public Utilities Commission.

20 (B) The contract provides no individual benefit to the person
21 that is not also provided to the public, and the investor-owned
22 utility receives no direct financial profit from the contract.

23 (C) The person has recused himself or herself from all
24 participation in making the contract on behalf of the state, county,
25 district, judicial district, or city body or board of which he or she
26 is a member.

27 (D) The contract implements a program authorized by the Public
28 Utilities Commission.

29 (18) That of an owner or partner of a firm serving as an
30 appointed member of an unelected board or commission of the
31 contracting agency if the owner or partner recuses himself or
32 herself from providing any advice to the contracting agency
33 regarding the contract between the firm and the contracting agency
34 and from all participation in reviewing a project that results from
35 that contract.

36 (c) This section is not applicable to any officer interested in a
37 contract who influences or attempts to influence another member
38 of the body or board of which he or she is a member to enter into
39 the contract.

1 (d) The willful failure of an officer to disclose the fact of his or
2 her interest in a contract pursuant to this section is punishable as
3 provided in Section 1097. That violation does not void the contract
4 unless the contracting party had knowledge of the fact of the remote
5 interest of the officer at the time the contract was executed.

6 (e) This section shall become operative on January 1, 2018.

7 *SEC. 3. No reimbursement is required by this act pursuant to*
8 *Section 6 of Article XIII B of the California Constitution because*
9 *the only costs that may be incurred by a local agency or school*
10 *district will be incurred because this act creates a new crime or*
11 *infraction, eliminates a crime or infraction, or changes the penalty*
12 *for a crime or infraction, within the meaning of Section 17556 of*
13 *the Government Code, or changes the definition of a crime within*
14 *the meaning of Section 6 of Article XIII B of the California*
15 *Constitution.*